

WaiversFirst Name	Last Name	Claim Number
[REDACTED]	W-14-0010	
Amount	OGC Received Date	Assigned To Assigned Date
08/04/2014	Richard Feldman	08/04/2014
EPA Decision	EPA Decision Date	Amount Approved Status
APPROVED	08/06/2014	CLOSED
Appeal	Comments	
No	8/6/14	

[REDACTED],

This email is in response to your request for waiver. For the reasons stated below, I hereby grant your request for waiver for all of the pay periods and years affected by the payment errors.

Briefly stated, after your departure from the [REDACTED], EPA hired you at the GS -12 Step 2 level. According to the information provided to me, EPA set the grade and step level by utilizing the "Highest Previous Rate" (HPR) regulations. The application of HPR resulted in your grade/step being set at GS-12 Step 2 instead of GS 12 Step 1. The setting of your salary rate at GS 12 Step 2 was erroneous. The Agency should not have utilized the HPR regulations because after leaving the [REDACTED] there was a break in your federal service before EPA hired you. The record reflects that this pay error began with the pay period ending August 2, 2008. EPA notified you of the pay error in January 2014.

Under 5 U.S.C. § 5584, I have the authority to waive collection of erroneous payments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Waiver is precluded if the employee is aware or should have been aware that he/she was being overpaid. B-271308, April 18, 1996. In the present case, I find that the erroneous payments were caused by Agency administrative error. Therefore, the only issue before me is whether you have established a sufficient basis for me to conclude that repayment of the debts caused by the erroneous payments should be waived.

When an employee has been assigned to the wrong step within a grade upon a promotion, demotion, or the assumption of a new position, the Comptroller General has usually waived any resulting overpayments. B-211166, August 25, 1983. The reason for this is that most employees cannot reasonably be expected to know the details of the pay regulations governing personnel actions. Further, these personnel actions are generally not furnished with any pay records which would, on their face, show assignment to the wrong

step within a grade. Thus, under these circumstances, a waiver is warranted because the employee could not reasonably have been expected to know or suspect he was being overpaid. B-198760, April 27, 1981. On the other hand, waiver will not be granted to an employee assigned to the wrong step within a grade if there is evidence indicating that the employee actually knew of the error, or was furnished with pay and personnel records which, on their face, showed the existence of the error. B-201815, March 25, 1981.

Furthermore, it has been consistently held that if an employee's salary appears reasonable on its face, there is no reason to expect or require an employee to audit the amount shown. B-219133, January 22, 1986. In this case, I find that you did not know or have any reason to suspect you were being overpaid. On July 11, 2008, you resigned from the [REDACTED]; EPA hired you on July 20, 2008. At the time, the EPA HR serving center was not aware of the brief break in service. In addition, nothing in the record indicates that you were aware or should have been aware that a break in federal service would affect the salary rate available to you upon beginning your employment at EPA. In this regard, the record contains a April 2014 memorandum from an HR specialist stating, [w]hen he transferred to EPA under a promotion action from a GS 11 to GS-12, [REDACTED] was entitled to a rather substantial increase in pay.” Based on these circumstances, I conclude that you had no reason to question or inquire about your grade, step level, and salary after you arrived at EPA and when you received your Statements of Earnings and Leave. I find your reliance on the Agency to set the correct amount of pay in this instance was reasonable. Therefore, all the criteria for waiver of the claim have been met and your request for waiver is approved.

By copy of this email, the Interior Business Center is instructed to make any corrective pay action which may be necessary including refunding any amount paid on this debt. If you have any questions, please feel free to contact me at 202-564-5434.

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Office of General Counsel
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Type
Incorrect Step-New Position

Attachments

